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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in the territory of the former Yugoslavia

Report on the situation of human rights in the Federal Republic of Yugoslavia submitted by Ms. Elisabeth Rehn, Special Rapporteur pursuant to Commission resolution 1997/57

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Introduction

1. The present report considers human rights developments in the Federal Republic of Yugoslavia (FRY) from January to September 1997. The report, drafted in early September 1997, reflects some changes in format. In her previous reports the Special Rapporteur considered the human rights situations in the four countries covered by her mandate (Bosnia and Herzegovina, the Republic of Croatia, the Federal Republic of Yugoslavia, and the former Yugoslav Republic of Macedonia) in single, comprehensive documents. However, to present a more thorough evaluation of the human rights situation in each of these countries, and in recognition of their different circumstances, she has decided to submit separate reports on each country. Nevertheless, the interdependence of the human rights situations of Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia, in particular, should be taken into account.

2. In addition, it was considered important to review recommendations made by the Special Rapporteur since the beginning of her mandate, and to assess the extent of their implementation. The present report thus contains a section discussing the Government's response to points raised by the Special Rapporteur.

3. Since her appointment in September 1995 the Special Rapporteur has conducted 10 missions to the Federal Republic of Yugoslavia, 3 of them in 1997. Her visits have included all parts of the country where human rights issues have been raised. Apart from visiting Belgrade, she has made regular visits to the Republic of Montenegro, and to Kosovo, Sandzak and Vojvodina. The Special Rapporteur has enjoyed full freedom of movement, and the Government has provided her with all necessary assistance in carrying out these visits.

4. The Special Rapporteur wishes to acknowledge the great assistance which she has received in information-gathering and analysis from the staff of the Belgrade office of the Office of the United Nations High Commissioner for Human Rights (OHCHR). Although seriously hampered by financial and administrative constraints, the field office has successfully accomplished a number of tasks, including organizing politically sensitive missions, assisting the Special Rapporteur in drafting her reports, intervening on her behalf with the authorities, maintaining contacts with local and international governmental and non-governmental organizations (NGOs), and keeping the Special Rapporteur regularly informed of human rights developments in the FRY.

I. GENERAL OBSERVATIONS

5. As he neared the end of his term as President of Serbia, Mr. Slobodan Milosevic was elected President of the Federal Republic of Yugoslavia (comprised of the Republics of Serbia and Montenegro) and assumed his new office on 23 July 1997. Presidential and parliamentary elections for Serbia were set to take place on 21 September 1997. The opposition coalition Zajedno, which last winter staged four months of peaceful protest in the country's major cities, compelling recognition of the true results of November 1996 municipal elections, has now disintegrated. Montenegro is

experiencing a political crisis resulting from mounting rivalry between President Bulatovic and Prime Minister Djukanovic, and will hold presidential elections on 5 October 1997.

6. In an inaugural speech upon assuming his new post, President Milosevic spoke of the blows which Yugoslav society had received in what he called the "historical tempest during the six most difficult years since the Second World War". He observed that the economy still was not fully operational and referred to the "brutal sanctions of the international community".

7. Of course, external factors such as sanctions have had a major impact on the FRY. However, internal factors which have caused the current state of affairs are rarely examined openly, either by political office holders, members of the ruling parties or, for that matter, leaders of the opposition. The Special Rapporteur notes that there has been virtually no examination of the policies and practices of the political leadership and the State-run media of the past six years, which have been discussed extensively in her previous reports. These policies and practices have been a major factor exacerbating ethnic division and provoking the conflict in the region, which has led to massive and gross violations of human rights and humanitarian law, not to mention destruction of the economy.

8. The attempts by the United Nations International Criminal Tribunal for the Former Yugoslavia (ICTY) to attribute individual as opposed to collective responsibility to violators of humanitarian law, including indicted persons currently living in the FRY, have been generally dismissed by the pro-Government press as biased. The opening of the Tribunal's liaison office in Belgrade was a positive development, but this was not followed by concrete government action to support the Tribunal either in its investigations of incidents in which Serbs are alleged to be responsible, or even of those in which Serbs were victims. The Government has consistently refused to meet its international obligations to hand over those indicted for war crimes and crimes against humanity. FRY commentators often argue that the perpetrators of these crimes should face justice before domestic courts instead of the Tribunal but, with one exception, no such trials have taken place, nor are such charges pending against anyone. The Special Rapporteur believes that the issue of responsibility for what has happened can no longer be ignored. It must be addressed thoroughly and openly if the great project of material and spiritual renewal and social recovery, which President Milosevic announced in his recent inaugural address, is to succeed.

II. LEGAL GUARANTEES FOR THE PROTECTION OF HUMAN RIGHTS

9. At the international level, the FRY is a party to all the main human rights instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention relating to the Status of Refugees; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A recent development was the Government's decision to join a small but growing

number of countries which have accepted the competence of the Committee against Torture to hear individual complaints. So far, no complaints are known to have been submitted by FRY citizens.

10. Yugoslav Governments have generally placed more emphasis on social and economic rights than on civil and political rights. General awareness of these rights has thus remained limited. However, NGOs continue to play an important role both in scrutinizing how these rights are applied in practice and in providing legal aid to those who want to enforce them. NGOs have also developed programmes of human rights education, an area unfortunately neglected by the Government. Moreover, there are encouraging signs among judges and lawyers, as well as others, of a renewed interest in the rule of law and the protection of constitutionally guaranteed and other human rights. The present report concentrates on civil and political rights, and reviews the framework for the protection of and respect for these human rights in practice, as well as possible means by which these may be strengthened.

11. In order to strengthen opportunities for individuals to secure respect for their human rights, the Special Rapporteur has repeatedly urged relevant ministers in Serbia, Montenegro and the FRY as a whole to take steps to ratify the Optional Protocol to the International Convention on Civil and Political Rights. (The Optional Protocol contains a complaints mechanism enabling individuals to bring allegations of infringements of rights contained in the Covenant before the Human Rights Committee at the United Nations.) However, the FRY Ministry of Foreign Affairs informed the Belgrade office of OHCHR that the Government has no intention of ratifying the Optional Protocol at present.

12. In contrast, the Government of the Republic of Montenegro has indicated an interest in ratification. The Constitution of the Republic contains a specific provision, at article 44 (2), granting citizens the "right to appeal to international institutions for the protection of freedoms and rights guaranteed under the Constitution". Interestingly, the Republic's Minister of Justice informed the Special Rapporteur in June 1997 that the Government of Montenegro "has expressed an interest [to the federal Ministry of Foreign Affairs] that the process initiated by the signing of the Covenant be completed". The Special Rapporteur believes that an early date for ratification of the Optional Protocol should now be set. Of all the countries of the former Yugoslavia, the FRY is the only one which has so far not accepted the competence of the Human Rights Committee to receive individual complaints under the Optional Protocol.

13. International human rights treaties such as the International Covenant on Civil and Political Rights can be directly applied by Yugoslav courts, as the federal Constitution declares international treaties to be "a constituent part of the internal legal order" (art. 16). Yet it appears that treaties are virtually never invoked in the courts. However, in a rare example, a court in Belgrade recently handed down an important judgement, quoting an international human rights treaty in its reasoning. The First Municipal Court held that Serb refugees from the so-called Krajina region in Croatia could not be drafted into the FRY army to fight in the wars in Bosnia and Herzegovina and Croatia. The court cited the relevant provision of the Convention relating to the Status of Refugees, which prohibits refugees from being returned to frontiers of territories where their lives may be threatened on grounds of

nationality or membership in a social group. The Special Rapporteur believes that the Government and professional legal organizations should encourage wider knowledge of the human rights treaties to which the FRY is a party, and notably the ways in which they can be directly applied in court proceedings.

14. As long as international human rights standards are only rarely applied in Yugoslav courts, it is important that Yugoslav constitutional and legal guarantees fully meet these standards. The human rights provisions of the 1992 federal Constitution largely meet the standards of the International Covenant on Civil and Political Rights. However, there are gaps and discrepancies which should be removed. For example, in contrast to article 9 (3) of the Covenant, the FRY Constitution does not require that arrested persons be brought promptly before a judge, and laws permitting up to 72 hours in police custody without judicial supervision seem to fall short of Covenant standards.

15. Another important discrepancy concerns the protection of human rights in states of emergency, regulated by article 4 of the Covenant. That article permits the suspension of fundamental rights in time of public emergency but strictly limits circumstances in which this can happen, further stipulating that certain rights can never be suspended. The federal Constitution, in article 99, allows the suspension of fundamental rights and, like the Covenant, lists a number of rights which can never be suspended. However, the most important right protected in the Covenant as non-derogable, namely, the right to life (defined to include the right not to be arbitrarily deprived of life and safeguards for those exceptionally sentenced to death), cannot be found in the FRY Constitution's list of protected rights. Nor does the Constitution reflect the strict limitations which the Covenant sets, such as the requirement that derogation measures must be "strictly required by the exigencies of the situation" and that other States parties be promptly informed of any such derogations. Provisions in the Constitution of the Republic of Serbia (at article 83) are even less satisfactory, permitting the President, during a state of war or danger of war, to take measures restricting fundamental rights without making reference to rights which may never be suspended.

16. This raises the question of discrepancies which continue to exist between domestic legal mechanisms for the protection of human rights in the FRY. First, three constitutions are currently in force in the country, adopted at different times and containing different human rights provisions. The Government has advised the Special Rapporteur that "there are no essential differences among the three constitutions and that the Constitution of the FRY has to be applied throughout the entire territory" of the country. However, one example of a major difference between the constitutions concerns the right to life. As pointed out in a previous report (E/CN.4/1997/9), the FRY Constitution does not provide for the death penalty; consequently, even grave crimes under federal jurisdiction such as crimes against humanity (which may involve multiple murders) are not punishable by death. However, the Constitutions of Serbia and Montenegro, adopted in 1990 and 1992 respectively, as well as the current Penal Code, permit capital punishment for ordinary but serious crimes, including murder.

17. The Special Rapporteur met with a convict sentenced to death in a prison in Kosovo and was later told by the federal Minister of Justice in January 1997 that his execution was most unlikely, since the Government had not carried out executions for many years and was not doing so at present. However, the convicted man continues to live under the threat of execution, which would not be the case had he been convicted of committing even multiple murders, a crime against humanity, or a war crime. The provisions in the three constitutions should thus be made consistent without further delay, with the higher standards for human rights protection provided in the FRY Constitution prevailing. The Special Rapporteur further believes that the death penalty should be abolished.

18. There are also discrepancies between the constitutions and other laws, many drafted under the former Socialist Federal Republic of Yugoslavia. Despite long-standing promises by the Government, legal provisions in the Penal Code and the Code of Criminal Procedure have still not been harmonized with constitutional standards. One example is the situation of persons held in police custody. An exceptional period of 72 hours in police custody is authorized by article 196 of the Code of Criminal Procedure during which suspects can be held without a judicial order or access to a lawyer. According to numerous reports received by the Special Rapporteur, police often abuse this period without judicial supervision to use illegal methods to extract information or "confessions". In contrast, the FRY Constitution (art. 23) provides for prompt access to a lawyer.

19. The Ministry of Justice of Serbia informed the Belgrade office of OHCHR that the new draft Code of Criminal Procedure provides for prompt access to a lawyer in line with FRY constitutional requirements. The draft Code's adoption remains uncertain, however, although the Government had previously informed the Special Rapporteur that the process would be completed by the end of 1996. A single Penal Code for the FRY will replace the two existing penal codes in Serbia and Montenegro, and the Special Rapporteur was pleased to learn that, in accordance with the FRY Constitution, it will no longer provide for capital punishment. However, the Penal Code's adoption remains uncertain as well.

20. Admittedly, the process of harmonizing these various laws with constitutional requirements is complex and time-consuming. However, the Special Rapporteur believes that the process should now be completed. This will not only bring clarity to a confusing situation which one constitutional expert has described as "legal chaos", but will limit the detrimental effects which the delay has on the way in which human rights are protected in practice, since laws, rather than constitutional guarantees, usually are applied in court.

III. INSTITUTIONAL MECHANISMS

21. In contrast to other countries of the former Yugoslavia, the Federal Republic of Yugoslavia does not have an easily accessible, independent and impartial supervisory body such as an ombudsman from which citizens can obtain redress. There is a Parliamentary Committee on Internal Affairs, but it is not known to have taken up human rights cases. The Serbian and Montenegrin assemblies have discussed creating ombudsman institutions, but so far no

concrete steps have been taken. The Special Rapporteur has repeatedly stressed the value of an ombudsman in her reports. She therefore welcomed learning from the Prime Minister of Montenegro in May 1997 that the Government has a positive attitude on this question, and that it is being studied by a group of legal experts. The Belgrade office of OHCHR has since provided further documentation on the functioning of such institutions in Eastern, Western and Central Europe to FRY and Montenegrin government officials. In a discussion with the Special Rapporteur in June, the federal Minister of Foreign Affairs was willing to consider an ombudsman-type institution, although he said legal obstacles would need to be overcome.

22. In the Special Rapporteur's view the creation of such an institution could provide effective relief to many persons who now face problems in securing enforcement of their rights. Many of those claiming to be victims of violations of human rights lack the financial means to bring legal action. Following a change in police structure several years ago, complaints against the police can no longer be made at the municipal level but only before the Ministry of the Interior, which has not been responsive to such complaints. Furthermore, Yugoslavia lacks a tradition of public interest litigation which could benefit disadvantaged groups. Courts are not accustomed to granting third parties locus standi. For example, an appeal by an NGO to the Federal Constitutional Court in 1995, claiming that constitutionally guaranteed human rights had been violated in a case concerning the newspaper Borba, was rejected. The Court held that only the federal authority in charge of human rights could initiate such a complaint, apparently disregarding article 37 of the Act on the Federal Constitutional Court permitting associations of citizens or other such groups to submit complaints on behalf of citizens whose rights have been violated.

23. There is presently no effective system to ensure that legal requirements in administrative and criminal procedures are enforced. The Serbian Ministry of Justice informed the Belgrade office of OHCHR that it has a board which supervises technical aspects of the administration of justice, and which can act on its own or receive complaints. However, if sanctions are not applied in case of wrongdoing, as reportedly they are not, the mechanism is of questionable value.

24. For example, in Montenegro, Ms. Radmila Kalezic was convicted on 10 March 1997 to nine years' imprisonment but had not received a copy of the judgement as of six weeks later, though the law requires that this should happen within a maximum of 15 days. Legal requirements were thus not met and Ms. Kalezic's right to appeal was curtailed. The Montenegrin Minister of Justice informed the Special Rapporteur that the 15-day limit was often overstepped, and that legal reform might be required. However, since the case was raised, the Minister received assurances from the president of the court that Ms. Kalezic would receive a written verdict by 10 May 1997, two months after her sentence.

25. In another example of a case in which sanctions or remedies for violations of rights would have been useful, the Special Rapporteur learned of an appeal to the Supreme Court filed in March 1996 on behalf of 43 men sentenced in Prizren on charges of conspiring to act to endanger the territorial integrity of the FRY. Although the law requires that in cases

where defendants are in custody, the court of appeal should deliver its decision within three months from the appeal's submission, lawyers say that this has not happened. The first session of the Supreme Court at which the case was scheduled to be taken up occurred more than a year later, in July 1997, and then was postponed until September. Lawyers complained of the lack of remedial mechanisms to ensure that official institutions comply with important procedural requirements.

IV. LIBERTY AND SECURITY OF THE PERSON

26. Within 24 hours of arrest, the court or the police are obliged to inform the family of a person taken into custody. Normally, an arrested person has to appear before a judge within 24 hours. However, as noted earlier, article 196 of the Code of Criminal Procedure permits, in exceptional circumstances, arrested persons to be kept in police custody for a maximum of 72 hours, without access to a lawyer or judicial supervision, although the public prosecutor must be informed. The 72-hour period is commonly used in cases of a political nature, and can effectively be extended to 4 days on the basis of the Law on Internal Affairs (art. 11) which authorizes police detention for 24 hours to establish a person's identity. At the end of the period, the arrested person has to be brought before the investigating judge who may decide to keep that person for one month on remand. A higher judge can extend detention to two months or, in serious cases, up to a maximum of five months. These periods apply before an indictment has been issued, after which there is no time limit to the period of detention.

27. Although, in general, these legal provisions appear to be observed, they are often violated in cases of persons arrested for political activities. The Special Rapporteur has been informed of numerous instances in which family members did not receive timely information about an arrest. This not only caused great anxiety, but also prevented the families from engaging a lawyer. Several parents of persons arrested during the November 1996-February 1997 demonstrations informed the Special Rapporteur that they had to search police stations in Belgrade to learn whether their children had been arrested and where they were kept. When Mr. Dragoljub Stosic, the leader of Belgrade's public transport driver's union, was arrested in October 1996 after leading a strike, his lawyers established his whereabouts after two days but his relatives were never informed.

28. In Kosovo, there have been particularly serious violations of national and international law requiring that arrested persons be brought promptly before a judge. In June 1997 Mr. Besim Rama and Mr. Avni Nura told the Pristina District Court that they were held for more than two weeks in secret detention, from about 16 September until 2 October 1996, during which they were tortured by police in an attempt to make them confess to acts of terrorism. They appeared on 2 October before the investigating judge who wrongly recorded the date of their arrest as 29 September, so it appeared that they had been detained for only the permissible three-day period. No action is known to have been taken against those who allegedly kept the two men in illegal custody, tortured them, and provided misinformation to the judge about the real date of their arrest.

29. In previous reports, the Special Rapporteur has stated that the incidence of police abuse could be reduced if lawyers were given prompt access to their clients (see, e.g., E/CN.4/1997/56). Although proposals to that effect are now incorporated in the latest draft of the new Code of Criminal Procedure, they have not yet been enacted. The Special Rapporteur is also concerned that existing laws governing communication between lawyers and their clients are inconsistently enforced, and that some detainees are prevented from communicating with their lawyers for long periods of time.

30. The Special Rapporteur has also received a small number of reports that relatives are arrested and held as "hostages" if the person sought cannot be found. These reports are confined to Kosovo (see section IX, below).

V. ILL-TREATMENT, TORTURE AND IMPUNITY

31. The Special Rapporteur continues to receive reports of torture and ill-treatment from various parts of the country. The most serious of which come from Kosovo. She wishes in the present discussion to focus on the question of impunity which, unless addressed by the Government, will continue to facilitate further acts of torture. Torture is specifically prohibited by article 25 of the FRY Constitution and article 218 of the Code of Criminal Procedure.

32. In various communications from the Government, the Special Rapporteur has been informed that it opposes illegal methods but that from time to time aberrations could occur. The Special Rapporteur therefore welcomed invitations from the Minister of Internal Affairs and the Ministry of Justice of Serbia to submit information on possible violations to them, and she has done this in a number of cases. Among the most detailed allegations which she has submitted have been the brutal treatment of a demonstrator, Mr. Dejan Bulatovic, which she described in a letter of 13 December 1996; the torture or ill-treatment of five men in Kosovo, one of whom died allegedly as a result, described in a letter of 16 December 1996; the beatings of journalists and other peaceful participants in demonstrations (letter of 6 February 1997); and the death in police custody in Kosovo of another man (letter of 26 February 1997).

33. The Special Rapporteur is disturbed that she has received no response to any of these letters, with the exception of a detailed reply from the Minister of Justice of Serbia about medical treatment provided to Mr. Bulatovic to help him recover from beatings he had sustained. Even that letter failed to react to the principal concern that the police had been responsible for ill-treating him. In none of the cases raised by the Special Rapporteur did the Government order an investigation or take steps to bring those responsible to justice.

34. Prosecutions against police for such practices are extremely rare. In Kosovo, where torture allegations are most numerous, only two policemen were sentenced to imprisonment for such practices between 1993 and late 1996, according to official data provided to the Special Rapporteur. The Ministry of Justice of Serbia informed OHCHR that after internal inquiries by the Ministry of the Interior, 14 policemen had been dismissed from service during 1996 or had other disciplinary measures taken against them, mostly for resorting to excessive use of force.

35. Montenegro, on the other hand, appears to pursue an active policy against perpetrators of police abuse, and such abuses reportedly have decreased. The Special Rapporteur raised the issue with the Republic's Minister of Interior on the basis of a book called Crna Kutija (the Black Box) which described more than 80 specific allegations of ill-treatment or torture between mid-1992 and 1996. The Minister informed her that 48 policemen had been dismissed on grounds of police abuse in the last two years in Montenegro, but that 20 were reinstated by the courts on appeal. He said he regretted that so many police against whom there was evidence of such practices had been reinstated. In one case, two policemen found guilty of ill-treating 15-year-old Miljan Despotovic and who lost their jobs as a result, appealed against their conviction and were reinstated in their posts by the court, even though supporting medical evidence of ill-treatment had been presented.

36. In most such cases, victims of torture or ill-treatment who want justice to be done have to resort themselves to initiating prosecutions. But the relevant legal provisions are difficult to enforce. Several dozen peaceful demonstrators and journalists who were seriously beaten by the police on 2-3 February 1997, some of whom required hospitalization for fractures and other injuries, put their cases to the public prosecutor in February 1997. So far he has apparently not reacted. One victim claims to have received threatening phone calls after submitting the case. The Special Rapporteur is unaware of any cases in which the perpetrators or those giving orders to use force against peaceful demonstrators in February 1997 have been brought to justice.

37. The Special Rapporteur also is following closely whether the public prosecutor's office of the Fourth Municipal Court in Belgrade will ensure that those responsible for inflicting serious injury on Mr. Nikola Barovic, a lawyer, on 16 July 1997 are brought to justice. Mr. Barovic has said that he was beaten on orders and in the presence of Mr. Vojislav Seselj, the leader of the Serbian Radical Party who is also President of the Municipal Assembly in Zemun, by one of Mr. Seselj's bodyguards. This happened minutes after both men had engaged in a heated debate broadcast live on television about evictions, especially of members of the Croat community from apartments which they had legally occupied in Zemun. Mr. Barovic appeared the same evening on television with serious wounds on his face for which he required medical treatment in hospital. Mr. Seselj later claimed that Mr. Barovic had "slipped on a banana peel". Serbia's Minister of Justice initially disclaimed knowledge of the incident, which was widely condemned in the media. The Special Rapporteur asked Serbia's Minister of Internal Affairs whether the police were investigating the attack and urged the public prosecutor to react. Two weeks later, on 31 July, he ordered an investigation.

VI. RIGHT TO LIFE

38. As noted above, constitutional protection of the right to life should be clarified and the highest human rights standards should apply, meaning that the death penalty should be abolished in accordance with the FRY Constitution. Although no judicial executions have been carried out for many years, there have been a few grave incidents in which detainees have died in Kosovo prisons

after torture. In her report of 29 January 1997 (E/CN.4/1997/56), the Special Rapporteur expressed grave concern about the death of Mr. Feriz Blakcori on 10 December 1996, allegedly as a result of torture in police custody. In a letter to the Chairman of the Commission on Human Rights of 3 April 1997, the Special Rapporteur also reported that Mr. Besnik Restelica had died on 22 February 1997 in the District Prison in Pristina, allegedly as a result of torture in detention. As noted above, the Government has not reacted to the Special Rapporteur's letters calling for impartial investigations into these and other allegations of torture in Kosovo.

VII. ADMINISTRATION OF JUSTICE

39. An important safeguard for the independence of the judiciary is guaranteed tenure. In the FRY, judges are appointed for a life term by a parliamentary panel, from a list drawn up by the Ministry of Justice. An independent Association of Judges in Serbia was established in 1997 and one of its first statements was that loyalty to the Government in office should no longer be a criterion for nominating judges. A new draft law on the judiciary was completed in July for the Republic of Serbia. If adopted, it will draw judges and legal experts into the nomination procedure, thereby enhancing potential for a professional and independent judiciary.

40. Judges complain that they lack protection and security in court, that their material position does not reflect their status and that their salaries are not paid on time. This insecurity makes them liable to pressure, especially since they lack the authority which should appertain to their office. In several cases court orders have been flouted by the security forces whose task it is to enforce them. For example, a number of residents of socially owned apartments in the Belgrade municipality of Zemun, notably Croats, were evicted from their apartments despite long-standing occupancy rights. This included the Barbalic family, who returned home from holiday on 4 July 1997 to find their flat occupied by new residents, as well as the Marojevic family, evicted on 17 January 1997. In both cases the courts issued temporary rulings in favour of the long-standing tenants but police refused to implement the orders. In one case, police were reportedly awaiting an order from the Ministry of the Interior to do so. By August 1997 the court orders still had not been implemented.

41. Pressures are particularly strong on judges sitting in political trials. One Supreme Court judge was quoted as saying: "Courts sit in judgement every day and do rule independently but in sensitive political trials that is not so. When I say that the courts have not reached the standards set by the Constitution [which proclaims the separation of legislative, executive and judicial powers] I mean those trials primarily. In those trials the judiciary is still listening to whispers from daily politics" (10 May 1997 interview in the weekly Vreme).

VIII. THE RIGHT TO A FAIR TRIAL

42. Fair trial standards are particularly at risk in cases connected with political activities. Major breaches of international standards for due process and also of several Yugoslav procedural requirements were found by an observer from the Belgrade office of OHCHR who observed two trials of Kosovo

Albanians conducted in the District Court of Pristina between May and July 1997. The cases were recently described in a special report of the Special Rapporteur (E/CN.4/1998/9). The most serious violations occurred during the period of pre-trial detention.

43. Many statements admitted in evidence by the court had apparently been extracted under torture or duress even though the Convention against Torture and articles 83 and 219 of the Yugoslav Code of Criminal Procedure specifically prohibit such evidence from being relied upon in court proceedings. A summary of the defendants' statements that they had been tortured or ill-treated was read into the record by the presiding judge. However, although lawyers said they had seen injuries resulting from torture on several defendants (one of whom had been put on a heated stove), and although several medical reports were presented which were consistent with the allegations, no investigations were ordered nor was further action taken. Lawyers' requests for independent medical examinations of clients who claimed to have been tortured and their requests to cross-examine experts appointed by the court were denied. Evidence put before the court which lacked appropriate authentication was nonetheless admitted. Considering the nature of the evidence presented, the Special Rapporteur expressed grave doubts as to whether the accused should have been found guilty.

44. Access to lawyers is another major problem. Several defendants in the Kosovo trials, including Mr. Enver Dugoli, complained that when they were brought before the investigating judge and asked for their lawyers to represent them, the judge refused the request. In fact, lawyers are specifically permitted by the Code of Criminal Procedure to be present when their client is examined by the investigating judge (art. 67). Several demonstrators arrested last winter in Belgrade and other major cities, charged with offences under the Law on Petty Offences made similar complaints. Some claimed that they were told by the judge who tried them that since they were only charged with minor offences, "they did not need a lawyer" to represent them. They were ultimately sentenced to several weeks of imprisonment. These restrictions contravene guarantees in the FRY Constitution and the International Covenant on Civil and Political Rights that defendants should have lawyers during trial. The Deputy Minister of Justice of Serbia informed the Belgrade office in March that the new draft Law on Petty Offences would guarantee the right of access to counsel at trial.

45. Under the FRY Code of Criminal Procedure, free communications between lawyer and client must be allowed after the investigation by the investigating judge is over or the indictment has been issued (art. 74). Lawyers acting for demonstrators in the Belgrade proceedings and for prisoners in the recent Kosovo trials informed the Special Rapporteur, however, that prison security guards insisted on remaining present during their consultations, preventing private communications. In Kosovo one defendant, Mr. Idriz Aslani, told the court on 3 June 1997 that he had been detained for six months without access to a lawyer and that the first time he could speak to his lawyer in confidence was three days before his trial.

46. The Special Rapporteur has also found other violations of the right to an adequate opportunity to prepare one's defence. In the trials of the Kosovo Albanians, the investigating judge denied lawyers access to essential trial

documents by excluding all documents except those concerning the examination of their own clients, until about a week before the start of the trial. However, the Special Rapporteur notes that fair trial standards were met insofar as the two trials were held in public and without delay. Detailed observations about the standards for fair trial applied in the two trials of Kosovo Albanians appear in the Special Rapporteur's separate report.

IX. FREEDOM OF EXPRESSION AND THE MEDIA

47. Hundreds of newspapers and radio and television stations currently operate in the FRY. A substantial number of newspapers are critical of the Government. Although these independent papers do not have the same access to cheap newsprint and effective distribution systems outside the capital as does the pro-Government press, the Special Rapporteur has received no complaints of censorship. As pointed out in a previous report, newspapers are much too expensive for the majority of the population. The principal and often only source of news is television and, to a lesser extent, radio.

48. Only State-run television, Radio Television Serbia (RTS), which is part of the Serbian Broadcasting Corporation, broadcasts throughout the country. It is therefore by far the most influential media outlet. It devotes 50 per cent of its air time to political reporting, but remains under tight government control. Serbia's Minister of Information acknowledged this in June 1997, saying that RTS's news programme "does not reflect the political reality in Serbia". The Special Rapporteur observes, however, that RTS has now started to provide limited coverage of some opposition activities.

49. By way of illustration, a survey by the independent news agency Beta of RTS's news coverage during the third week of June 1997 showed that the channel's political news programmes mainly covered activities of State agencies and officials. All were presented in positive terms; no officials were questioned or criticized. Seventy-five per cent of the coverage of party activities was devoted to the ruling coalition of the Socialist Party and the Yugoslav Left. Opposition parties were presented in negative terms or else shown when criticizing other opposition parties. In the case of Studio B, on the other hand, which is owned by the Belgrade municipality and can be seen only in Belgrade, criticism of the Government was a dominant theme. Protests against the Government, ignored by the State electronic media, were given twice as much time as governmental activities.

50. In a positive development, programmes produced by independent Radio B-92, which was closed down by the Government for several days during last winter's demonstrations, can now be heard throughout most parts of Serbia, except Kosovo and Sandzak. The authorities have also restored broadcasting facilities to Radio Boom 93 in Pozarevac, eight months after withdrawing them during the winter demonstrations. However, in March 1997 the transmission strength of privately owned BK TV was limited at a time when its owner was considering running as a presidential candidate. Although the Belgrade Economics Court ordered that transmission be restored, as of early May 1997 BK TV was still unable to broadcast south of Belgrade. The official explanation given by the authorities was that the PTT transmitters used by BK TV had broken down. Although the BK Corporation immediately offered to

replace the transmitters, no agreement on this has been reached. Before these problems occurred, BK TV could be seen by up to 70 per cent of all viewers in Serbia. That figure is now down to 25 per cent.

51. In a welcome move, the Government of Montenegro granted permission in July to independent Radio Antenna to extend its broadcasts outside the capital, Podgorica. TV Montenegro, however, remains under the firm control of the Government, although it has reached an unusual agreement with opposition parties. State-run electronic and print media are now obliged to broadcast and publish any signed statement by an opposition party in Parliament, provided it stays within certain limits (about 25 printed lines or 3 minutes of broadcasting). It appears that the agreement is being fully honoured.

52. Serbia's Minister of Information stated in April that she wished to regularize the situation of numerous electronic media that were broadcasting without a licence. She informed the Special Rapporteur that priority should be granted to the longer-established media. The federal Ministry of Information announced in July that 347 radio and 153 television stations were operating without a licence, nearly all of them in Serbia. However, several radio stations, among them Radio B-92, have in fact been applying for official licences for several years, without ever receiving a response. The Independent Association of Journalists of Serbia claimed that the Government was responsible for neglecting the situation and usually initiated closures of independent radio and television stations only once they started broadcasting news.

53. By July 1997, 77 radio and television stations, owned privately or by local municipalities, had been closed down by the Government, the vast majority of which had operated in cities where opposition parties had won local elections. In the run-up to Serbian elections set for September 1997, this raised fears that the closures were prompted by political considerations. However, Serbia's Information Minister announced on 28 July that the closures would be suspended until after the elections, and broadcasting facilities were restored to all of the stations affected by these measures.

54. The Special Rapporteur has been particularly concerned that appropriate free speech standards should be reflected in the new Public Information Law, a third draft of which was presented to Parliament in August 1997. Serbia's Minister of Information had welcomed detailed comments on the two previous drafts provided by the Belgrade office of OHCHR and appears to have taken some of them into account in preparing the third draft. A positive feature of the draft law is that State bodies are obliged to provide free access to information in their charge, unless it is officially secret. This should help to address long-standing criticism by independent media in Serbia which, unlike media in Montenegro, have difficulties in obtaining access to official information or briefings from government ministries.

55. However, important concerns remain. The draft media law contains several articles which can be used to restrict the right of editors and journalists to express themselves freely. For example, the law would prohibit media from publishing and even reproducing information "offending the honour or respectability of a person, or containing offensive formulations or indecent expressions". This provision not only appears to exceed the limits

permitted by article 19 of the International Covenant on Civil and Political Rights on the right to free expression, but it can also prevent journalists from reporting on court cases of public interest. Moreover, this and other articles of the draft law contain broadly phrased formulations, notably the obligation for media to provide "true information" and not to publish or transmit "false information on [a] person's life, knowledge and capabilities". They can easily be used to inhibit legitimate criticism or scrutiny of the conduct of public persons such as politicians, in contravention of international standards. European human rights jurisprudence has emphasized that politicians should display a higher degree of tolerance towards criticism of their conduct than ordinary citizens.

56. Furthermore, the new draft still requires each copy of a newspaper to carry details of sources of capital and financial structure. It also requires that financial assistance from abroad be officially declared and published at least once a year. These requirements could limit practical enjoyment of the right to freedom of expression by the media concerned.

57. In Montenegro two opposition leaders, Mr. Novak Kilibarda and Mr. Slavko Perovic, were sentenced in March to pay a large fine to the Republic's President and Prime Minister. The latter had filed a civil suit against the two for violating their "honour and reputation" by making alleged derogatory remarks about the President and Prime Minister during last year's election campaign. The President and the Prime Minister had to show that the remarks had caused them "mental suffering", but lawyers pointed out that no evidence was produced in court either of the nature of the statements made or of the suffering allegedly caused. (The Prime Minister later dropped his suit.) The Special Rapporteur, in her discussions with the officials themselves, expressed concern that the trials appeared to fall short of international standards, including those which require politicians to tolerate higher levels of scrutiny.

X. THE SITUATION OF MINORITIES

A. Kosovo

1. Liberty and security of person

58. The Special Rapporteur has continued to receive reports of serious ill-treatment and torture committed in Kosovo against persons in police custody. This violence has been mainly, though not exclusively, reported in connection with police raids and arrests undertaken as a response to violent attacks against the Serbian police and private individuals over the last year. As noted in the Special Rapporteur's recent report, most of the defendants in trials held in Pristina in May-July 1997 allege having been subjected to torture during interrogations by the police and State security services. Throughout the reporting period, staff of the Belgrade office of OHCHR have interviewed a number of persons who witnessed or were themselves subjected to ill-treatment and other human rights abuses at the hands of the police in Kosovo.

59. In April 1997 testimony was received from four Kosovo Albanian students who alleged having been physically ill-treated by the police in Pristina.

According to their account, on 19 March 1997 at around midday they were stopped by two uniformed police officers in a street in central Pristina. After checking the identity papers of the four men, the police took them into the entrance of a building nearby, where they were ordered to get undressed for a body check. One of the police officers then pulled out his truncheon and allegedly started beating the men on their legs and backs. Between the beatings the four were ordered to give information about their studies at the "parallel" university in Pristina and about a shooting incident in which a police officer was killed in Podujevo. The four men were reportedly released after 1½ hours of beatings and questioning.

60. The Special Rapporteur has also received a number of allegations of so-called "hostage" arrests, in which the police have detained relatives or family members of persons being sought by the police. In one such incident on 10 June, the police entered a private house in a village near Skenderaj searching for a Kosovo Albanian man. As they failed to find the person concerned, they detained his brother instead to make the man give himself up. In an earlier incident on 29 April, special police units allegedly raided a private home in Pristina looking for "NN", the owner of the house. As he was not at home, the police allegedly harassed and ill-treated his wife and daughter. His brother, living in a house nearby, was reportedly taken to the police station.

61. The violent attacks against Serbian police and persons employed by the local authorities in Kosovo have continued in recent months. In one of the latest incidents two police officers were seriously injured on 4 August 1997 when their car came under automatic-rifle fire near Srbica. Also in August another police vehicle was damaged when it was hit by gunfire on a road near Podujevo. The previously unknown organization "Liberation Army of Kosova" has claimed responsibility for most of these attacks, in which some 30 persons have lost their lives in the last year. Following the killing of two Kosovo Albanian men and a Serbian police officer in May, the group issued a communiqué threatening to carry out more strikes against persons who "collaborated with the Serbian authorities".

2. Return of asylum seekers

62. In her last report (E/CN.4/1997/56), the Special Rapporteur took note of the alleged ill-treatment of two Kosovo Albanian men who were returned to Kosovo in September 1996 after their applications for political asylum had been rejected in Germany. In view of these allegations and the general situation in Kosovo, the Special Rapporteur recommended that any planned return programmes include adequate human rights safeguards to ensure that these people can return to their homes in safety and dignity. On 10 October 1996 the Governments of the FRY and Germany signed an agreement on the return of rejected asylum seekers and other persons without legal residence. The agreement entered into force on 1 December 1996, and the first repatriation took place in late January 1997. As of 31 July 1997, 1,600 persons had been forcibly repatriated under the agreement, and about the same number had returned voluntarily to the FRY. Around 90 per cent of them were Albanians from Kosovo. The agreement includes a human rights clause (art. 2.2), under which returns are to be carried out with full respect for returnees' human rights and dignity. While the agreement formally covers up

to 130,000 Yugoslav citizens without legal residence in Germany, it is believed that 20,000-30,000 persons could be repatriated in the next three years.

63. After the agreement's entry into force, neither the Special Rapporteur nor her staff have been approached by returnees alleging that their human rights were violated upon return to the FRY. Information from local sources also indicates that, with a few exceptions, the return programme has proceeded so far without serious incidents. It is reported, however, that a number of returned asylum seekers have been verbally abused or summoned for so-called "informative talks" by the police, while others have been temporarily detained upon arrival. Isolated cases of alleged police abuse of returnees also have been reported, but the allegations have not been verified. It may be noted that a considerable proportion of the persons repatriated so far reportedly have criminal charges pending in the FRY or Germany, which may in part explain why some persons have been detained and questioned by the police. The German Embassy in Belgrade has submitted 10 cases of alleged harassment or temporary detention of Kosovo Albanian returnees to the federal Ministry of Interior, but the Ministry has reportedly not responded to these inquiries.

64. The Special Rapporteur notes that the Government of Switzerland concluded a similar agreement with the FRY on 3 July 1997. The agreement provides for the repatriation of 12,000-13,000 FRY citizens, almost all of them Kosovo Albanians, whose applications for political asylum have been rejected by the Swiss authorities. The first repatriation from Switzerland is planned to take place before the end of the year. A bilateral expert commission, composed of representatives of the Swiss and FRY Ministries of Interior, is discussing modalities for the repatriation process. The agreement, which is not limited in time, includes provisions aimed at safeguarding the human rights and dignity of the returnees.

3. Education

65. A full year has passed since the memorandum of understanding on the normalization of education in Kosovo was signed by President Milosevic and Dr. Rugova on 1 September 1996, and the Special Rapporteur notes with concern that no concrete steps have been taken to bring this agreement into practice. The joint commission tasked to implement the agreement has met several times since the beginning of the year, but the parties seem to be locked in their positions. It is estimated that some 300,000 pupils attend the "parallel" primary and secondary schools which have operated throughout Kosovo since 1990. It is reported that the Albanian "parallel" university in Pristina has enrolled 6,165 students for the next academic year. Most of these institutions operate in private houses and other temporary premises, which are clearly inadequate for teaching and training purposes. In mid-August 1997 Kosovo Albanian students of the "parallel" university in Pristina announced that they would try to enter the premises of Pristina University itself at the beginning of the new academic year in October, and that they would launch street protests to express their frustration over the failure to implement the September 1996 memorandum.

4. Discrimination and property rights

66. The Special Rapporteur's attention also has been drawn to a number of cases relating to implementation of the 1989 Act on Special Conditions for Real Property Transactions. It is reported that from April to June 1997, more than 60 Kosovo Albanians were sentenced to 60 days in prison for purchasing property without the approval of the Serbian Ministry of Finance as required by law. The Act entered into force on 22 July 1989 and is to be applied for 10 years. This law, which applies to the whole of Serbia except for the province of Vojvodina, places severe restrictions on the purchase, sale, exchange and renting of real property between members of different ethnic groups. Under the law all property transactions have to be approved by the Serbian Ministry of Finance. Complaints against the Ministry's decisions may be filed with a Special Committee of the Serbian Parliament, whose decisions are final.

67. According to the law, approval of real-property transactions is only to be granted if the transaction is deemed to have no impact on the ethnic structure of the population and will not provoke anxiety, insecurity or inequality among persons belonging to different ethnic groups. The law further provides for sanctions only against the purchaser, in cases where transactions are carried out without the approval of the Ministry. On the face of it, the underlying logic of the law appears to be to control the migration of certain ethnic groups from areas in which they constitute a minority, thereby preventing undesired changes in the population's ethnic distribution. It may be noted that the law was passed at a time when there was a growing concern over the increasing migration of Serbs from Kosovo.

68. Cases and materials studied by the OHCHR Belgrade office suggest that the law is being unevenly and arbitrarily implemented, depending on the applicant's ethnicity and place of residence. The fact that the law is not applicable in Vojvodina would appear to place owners of property outside that province in an unequal position before the law. The exclusion of Vojvodina from the law's scope is also surprising considering the fact that some 30 different ethnic communities live in that region. The Ministry of Finance has in several cases made reference to the law, and rejected requests for authorization to purchase property filed by members of minorities in areas where there would appear to be no obvious concern about drastic changes in the population's ethnic structure. Ethnic Albanians and other members of minorities with permanent residence in Belgrade wishing to buy apartments in that city have reportedly had their applications rejected. It is also reported that members of the Turkish minority in Prizren have been prevented from purchasing property in that municipality, despite the fact that the community's population is continuously decreasing. According to local lawyers, around 98 per cent of the applications filed by Albanians or other minority members in Kosovo are rejected, and it is alleged that many transactions even between members of the same ethnic group are blocked. On the other hand, the Ministry has apparently made no objection to minority Muslims in Sandzak selling their property to local Serbs before leaving the country. The Special Rapporteur is concerned that this law places citizens in an unequal position, and that members of minorities are suffering discrimination in its implementation.

B. Sandzak

69. On 10 July 1997 the situation in Novi Pazar turned tense when heavily armed police units, together with the Serbian Minister of Local Government, entered the municipality building with an order from the Serbian Government to dissolve the town administration and assembly. By this order the Government also introduced a mandatory rule bringing the functions of local administration under the control of a new municipal council composed of the local branches of the Socialist Party (SPS) and the Yugoslav Left (JUL) - the ruling government coalition in Serbia. Furthermore, a congress of the coalition "List for Sandzak" planned for 12 July in Novi Pazar was banned by an order from the Serbian Ministry of Interior. In last year's local elections the "List for Sandzak", led by Mr. Suleijman Ugljanin's Muslim National Council for Sandzak, had secured two thirds of the seats in the municipal assembly. In the July 1997 incident, a number of people who had gathered outside the building were reportedly beaten by the police, and Mr. Ugljanin, a member of the FRY Parliament, was prevented from entering. All access roads and major street crossings in Novi Pazar were reportedly blocked by the police from 10 to 13 July.

70. In a press release the Government stated that the action was taken due to a number of illegitimate and unconstitutional decisions made by the municipal organs of Novi Pazar. According to the decision, the municipality was placed under mandatory rule because the municipal organs had been ethnically and politically biased when filling key public offices, and because it had failed to meet its obligations to cover the expenses of the local primary and secondary schools. The decision further makes reference to article 45 of the Law on Local Government, under which the Government is entitled to appoint a new council to run a municipality if it is established that the elected organs have acted illegally or unconstitutionally.

71. Without prejudice to the merits of the case, the Special Rapporteur notes that the law in question gives far-reaching powers to the central Government to intervene in the work of locally elected organs, and it would therefore seem advisable that its provisions be interpreted restrictively. The Special Rapporteur is also concerned that these drastic measures, which de facto amount to nullifying the results of last year's local elections, are not conducive to fostering the fragile democracy slowly taking root in Serbia.

72. OHCHR staff interviewed two persons who were briefly detained and ill-treated by the police in connection with the police action on 10 July. One of the men, a resident of Novi Pazar, stated that he was handcuffed by the police when he approached the municipal building where a crowd of some 200 people had gathered. On the way to the police station, he was allegedly beaten by the police. This ill-treatment reportedly continued outside the police station, where a group of special police beat the man with truncheons. He was then left handcuffed in a corridor in the police station, where police officers allegedly beat and kicked him as they passed by. He was released after four hours, without any explanation as to why he had been detained.

73. On 11 July the District Prosecutor in Novi Pazar requested that the federal Parliament waive Mr. Ugljanin's parliamentary immunity and he was officially notified of the decision to do so only on 28 July. On 18 July he

had appeared before the District Court in Novi Pazar for a hearing on charges brought against him in 1993. The hearing was adjourned at the request of Mr. Ugljanin's attorney, and was resumed on 30 July. Mr. Ugljanin is conducting his defence at liberty. It will be recalled that he left the FRY in 1992 after having been accused of engaging in "activities aimed against the constitutional order of the State", under article 136 of the Penal Code. He returned to the country in September 1996, without any legal action being taken against him, and was elected a member of the federal Parliament in last year's elections.

74. As noted in the Special Rapporteur's earlier reports, the security situation in the Sandzak area has improved in recent years. While no systematic abuses have been reported, however, the Special Rapporteur was informed of some violent attacks against Muslims that occurred in the first months of 1997. It appears that the police have taken no action to investigate these crimes, which were apparently ethnically motivated. It was, for example, reported that on Orthodox Christmas Eve, 6 January 1997, an explosive device was thrown into a shop owned by a Muslim man in Priboj. The same night a number of kiosks and shops owned by Muslims in Priboj were reportedly vandalized by unknown persons.

75. In late June the Special Rapporteur was informed of the death of Mr. Jusuf Pramenkovic, a Muslim refugee from Sarajevo. Mr. Pramenkovic was reportedly prevented from entering the FRY by Serbian police in Priboj while travelling by bus from Sarajevo to Novi Pazar on 20 June 1997. He then went missing for seven days before his body was found in the river Lim near the village of Sjeverin - an area where abuses of the local Muslim population have been reported in past years. Prior to this discovery Mr. Pramenkovic's family tried to persuade the police in Tutin, their home town, to inquire with the Priboj police about his whereabouts, but to no avail. On 28 June his relatives went to Rudo, Republika Srpska (Bosnia and Herzegovina) to recover his body, and to prevent it from being buried there. Despite the unclear circumstances of Mr. Pramenkovic's death no autopsy was carried out, nor was a police investigation initiated to determine the cause of his death.

76. A longstanding issue in Sandzak is the situation of internally displaced persons in Pljevlja and Priboj. In her report (E/CN.4/1997/8) of 25 October 1996, the Special Rapporteur gave a detailed account of her findings on this question. On 4-5 May 1997 she visited the town of Pljevlja where around 40 families of displaced persons originating from the remote border region of Bukovica are accommodated. It is estimated that 1,500 people left Bukovica in 1992/93. While the majority of the families in Pljevlja appear to have left due to fear of the war in neighbouring Bosnia and Herzegovina, some were forced to leave because of violence and harassment mainly by Bosnian Serb army and paramilitary units passing through the area. However, reservists of the Yugoslav National Army (JNA) were also said to be responsible for some of these acts. Most of the houses left behind by the fleeing Muslims were badly damaged by the military and looting neighbours. In autumn 1996 the Office of the United Nations High Commissioner for Refugees (UNHCR), in cooperation with the Danish Refugee Council and Swiss Disaster Relief, rebuilt six of the abandoned houses. The owners were expected to move back to their homes in spring 1997, but it appears that this project has been postponed.

77. During her visit to Podgorica in May 1997 the Special Rapporteur discussed the situation of the displaced in Pljevlja with members of the Government of Montenegro, and stressed the responsibility of the authorities to assist the internally displaced to return to their homes. On 5 August the Prime Minister of Montenegro, Mr. Milo Djukanovic, wrote a letter to the Special Rapporteur outlining the Government's plans to develop the region of Bukovica, inter alia by improving local roads and modernizing medical services. The Government has also opened a new police station in Kovacevici-Bukovica, in order to improve the security situation in the area.

78. A group of 217 internally displaced persons in Priboj are still waiting to go back to their homes in the Sjeverin-Kukurovici area. In October 1996 the authorities of the Republika Srpska gave permission to these people to cross a strip of Republika Srpska territory on the road between Priboj and their villages. Many of the displaced now go regularly to the villages to inspect their destroyed homes and to tend their gardens, but most return to Priboj in the evening because of security concerns or simply because their houses are uninhabitable. The majority of the displaced in Priboj feel that the Serbian authorities have not taken adequate measures to make their return safe. Others appear more confident about moving back, but cannot do so since their homes are damaged and lack basic facilities, such as electricity and water. International relief organizations have suspended their plans to rebuild some of the damaged houses in Sjeverin and to assist people willing to return, in the absence of solid security guarantees. The Special Rapporteur has on numerous occasions raised the situation of the displaced in Priboj with the FRY and Serbian Governments, including with President Milosevic. She has, however, been discouraged by the authorities' failure to take steps to solve this problem, despite their promises to do so. During her last meeting with the federal Minister for Foreign Affairs, Mr. Milan Milutinovic, in Belgrade in June 1997 the Special Rapporteur reiterated her concern over the situation of the displaced, and the Minister agreed to look into the matter personally.

C. Vojvodina

79. In her report (E/CN.4/1997/8) of 25 October 1996, the Special Rapporteur gave an extensive account of the concerns raised by minority groups living in the northern province of Vojvodina. The main issues discussed in that report were problems regarding minority representation in public offices and companies, the use of minority languages in official matters and education, as well as refugee settlement in the region. The report also gave an overview of past human rights abuses against members of minorities in Vojvodina. While the situation has not substantively changed in the last year, some specific problems have been brought to the Special Rapporteur's attention in recent months.

80. It has been reported that members of the Steering Board of the Democratic Union of Vojvodina Croats were called to "informative talks" with the State Security Service after the party's congresses in April and May this year. It is alleged that these persons were verbally abused and threatened by security officials during these talks. While this reportedly has not been an uncommon practice in the past, it appears that the frequency of these calls increased in the first half of 1997. Members of the party, who returned to the FRY after attending seminars and conferences abroad also complain that

they were subjected to seemingly unmotivated document and luggage checks, and that their personal papers and notes were photocopied by border police.

81. The Special Rapporteur has also been informed of the situation of 11 Croat families in the village of Stanisic, near Sombor, who are unable to move into their houses and apartments, which are occupied by refugees. Most of the houses were occupied in August-September 1995 when some 1,800 Serb refugees from the Krajina region of Croatia arrived in the Stanisic area. Although the refugees were supposed to be accommodated in the houses only temporarily, they now refuse to move out, despite being ordered to do so by both the Sombor municipality and provincial authorities. Reportedly, the police have failed to carry out orders to evict the refugee families. It appears that Croats in Apatin and Sremska Kamenica have experienced similar difficulties in moving back to their homes. In autumn 1995 the village of Stanisic was shaken by violent attacks on the local Croats mainly by arriving refugees. It is reported that in the period August-October 1995 there were 28 attacks with hand grenades and other explosives against Croat homes in the village. By the end of 1995, 120 Croats had left the village for Croatia. The police allegedly took no action to investigate these incidents.

82. In the period 1992-1994 approximately 20,000-30,000 ethnic Hungarians left Vojvodina and moved to Hungary, and it is believed that around half of these persons were young draft evaders. Although specific figures on the number of people who have returned are hard to obtain, it is estimated that some 3,000 may have moved back in the last year. On 18 June 1996 the federal Parliament passed an amnesty law aimed at allowing draft evaders to return to the country without fear of prosecution. There are no reliable data concerning the number of Hungarians who have so far returned under the law, but local human rights groups report that the law has generally been correctly implemented. The Special Rapporteur is not aware of any case in which returning draft evaders have been put on trial or otherwise punished. On the other hand, however, it appears that no draft evaders or deserters of Croat origin have returned under the law so far.

D. Montenegro

83. In April 1997 the Special Rapporteur was informed of an incident involving the Roma community in Montenegro. On 15 April 1995 a Montenegrin girl had been raped by a 15-year-old boy belonging to the Roma community in Danilovgrad. He was later convicted and sentenced to imprisonment. On the day of the incident, several hundred local people came to the colony where the Roma lived and destroyed their houses and property. The perpetrators were not identified and no criminal proceedings were initiated at that time. After the incident the Roma were forced to live on the outskirts of Podgorica, without assistance from the Government. In addition to losing their property the Roma also lost their jobs as they were unable to return to work for five days, having no place to live. The children also lost two years of school education. In September 1996 a group of 74 Roma presented a claim for reimbursement for damages suffered, and requested legal proceedings to be initiated on three occasions, in October 1996 and February and April 1997. However, these requests received no response from the authorities.

84. During her visit to Podgorica in May 1997, the Special Rapporteur met with representatives of the Roma group and with the Montenegrin Minister of Justice, whom she strongly urged to take measures to speed up the legal proceedings. By a letter of 5 June, the Minister informed the Special Rapporteur that the date for the hearing of the case had been set for 6 June 1997. The legal proceedings did indeed start at the Municipal Court in Podgorica on that date, and are reportedly still continuing.

XI. THE HUMANITARIAN SITUATION

85. The Special Rapporteur is aware that major humanitarian problems exist in the FRY. Large parts of the population are struggling for survival in a depleted post-war economy. Educational, health and other public sector staff face delayed payments of salaries and wages and have increasingly resorted to strikes. Private sector workers also often must wait for months to receive payment, and many do not receive the full wages due them. Pensioners and other recipients of social benefits often have to wait for several months, and sometimes nearly a year, to receive their allowances.

86. Industrial production is now at 40 per cent of its pre-war level, and trade unions report that thousands of workers earn no more than 200 dinars (about US$ 33) a month. Average salaries stood at 807 dinars ($133) in June 1997, a sum which barely covers half the average monthly consumer basket, estimated at 1,556 dinars ($257). A recent report found that 3 million Yugoslavs, out of a population of 10 million, were living below the poverty line, and that nearly half the population able to work had no monthly income. Although the Government is still seeking to maintain basic social services for the population, it is increasingly hard to provide them. Basic health care is free, but the service has sharply deteriorated and many patients have difficulty in getting necessary medical treatment and essential medicines.

XII. REFUGEES AND CITIZENSHIP

87. The Refugee Law provides that refugees have the right to employment and education and the same access to health care as the rest of the population. However, the situation of refugees, of whom 561,000 are officially registered, has not improved. Food aid, primarily from foreign sources, was drastically cut this year. In the second half of 1996, the World Food Programme was providing 12 kg of flour per person per month to 400,000 recipients. This year the amount of flour was halved and the number of recipients reduced to 250,000. The number of recipients of the supplementary food basket provided by the European Community Humanitarian Office (ECHO) was also reduced from 400,000 to 250,000.

88. The Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia, signed in August 1996, obliges the two States to ensure conditions for the free and safe return of refugees, and the return of their property or a just compensation. Yet, although the contracting parties continue to meet, there has been no substantive progress yet in any of these vitally important areas. The Agreement also stipulated the conclusion of an accord on social insurance, including the payment of pensions, by January 1997, but this had not happened as of August 1997.

89. Only a small number of refugees have been able to return to their homes from the FRY. UNHCR reports that as of the end of August 1997 only 959 refugees had been repatriated to Bosnia and Herzegovina and no more than 1,030 to Croatia. While there are no formal or legal obstacles to refugees returning to Bosnia and Herzegovina, security concerns and lack of adequate housing have often made refugees reluctant to return to areas where they would be in a minority. In addition to these same concerns, refugees wishing to return to Croatia find mounting administrative obstacles in their way. For example, Croatian authorities initially allowed refugees to return to Croatia either if the Croatian Office for Displaced Persons and Refugees (ODPR) had granted them authorization for family reunification or if the refugees had obtained domovnicas (certificates of Croatian citizenship). However, since April 1997 refugees in the latter group are additionally required to obtain passports, at the cost of DM 200, if they wish to return on their own (and not with the assistance of UNHCR). In practice, however, even if they can afford them, refugees cannot obtain passports. The newly opened Croatian Embassy in Belgrade does not issue passports unless domovnicas are produced, and the latter are not granted to refugees living in the FRY.

90. For many refugees the property they left behind, mostly in Croatia, is their sole financial asset. Many of their houses, however, have been occupied by others and it is extremely difficult, if possible, for refugees to sell property from the FRY. Under annex 7 of the Dayton Agreement a Commission for Real Property Claims of Displaced Persons and Refugees was established covering real property claims in Bosnia and Herzegovina. The Commission is operational in Bosnia and Herzegovina and has recently opened two offices in Montenegro, where registration of property claims started in July. However, the vast majority of refugees with property in Bosnia and Herzegovina live in Serbia and do not have access to the Commission.

91. The new Yugoslav Citizenship Law took effect on 1 January 1997. Any citizen of the former Socialist Federal Republic of Yugoslavia who habitually resided on FRY territory as of 27 April 1992 can, after application, automatically acquire Yugoslav citizenship. Refugees from the former Yugoslavia arriving after that date who do not have other citizenship, may also be granted Yugoslav citizenship but this decision is left to the discretion of the competent federal authorities. All applicants have to state they do not possess other citizenship or have renounced such citizenship. Applications are submitted to the federal Ministry of the Interior. Habitual residents have to apply before 1 January 1998; no time-limit has been set for applications by refugees. No figures are yet available on the number of refugees who have been granted FRY citizenship, but indications are that the numbers are small.

92. A key concern of refugees appears to be their fear that, by applying for FRY citizenship and thus having to renounce their current citizenship (e.g. of Croatia or Bosnia and Herzegovina), they would lose their property rights and the right to return to their country of origin. Often their homes are their only major material possession. Dual citizenship is therefore a favoured option and, although discussions between the FRY and the Republic of Croatia have started on the issue, no agreement has yet been reached. The Special Rapporteur welcomes the fact that refugees have been given time to decide

whether to apply for FRY citizenship, and she favours any durable solution which enables them effectively to exercise their right to property in the countries which they have left.

XIII. THE GOVERNMENT'S RESPONSE TO HUMAN RIGHTS CONCERNS RAISED BY THE SPECIAL RAPPORTEUR

93. The Special Rapporteur recalls with appreciation the Government's decision in February 1996 enabling the Office of the United Nations High Commissioner for Human Rights to open an office in Belgrade to assist the Special Rapporteur in carrying out her mandate. Since assuming office, she has received full cooperation from the FRY Government in meeting appropriate officials during her frequent visits to the country. OHCHR field staff have been free to travel anywhere they wish. The Government has also provided additional information and comments on most of the reports that the Special Rapporteur has submitted to the General Assembly and the Commission on Human Rights.

94. However, the Government's cooperation remains strictly limited in scope. In particular, the Special Rapporteur is concerned that the Government has not responded to issues she has raised nor implemented her most important recommendations. The Special Rapporteur believes that the exercise of her mandate should not be limited to the preparation of reports to be submitted to United Nations bodies but should lead, in the FRY, to prompt and concrete measures which benefit people whose rights are being violated. Unfortunately, this has not happened.

95. The Special Rapporteur has rarely received responses to the many detailed questions about reported violations of human rights she has raised in the course of the last year, whether in person or in writing. Detailed communications to the Ministry of the Interior about police misconduct during last winter's demonstrations in Belgrade and at other times throughout the country, notably in Kosovo, have not elicited any response. Nor has the Special Rapporteur received a response to her latest report finding major breaches of due-process standards in two trials of Kosovo Albanians in the summer of 1997, in which the defendants were sentenced to long terms of imprisonment for alleged offences against State security.

96. The Government also is failing to comply with virtually all its treaty obligations to submit periodic reports about the implementation of its commitments under human rights treaties to which it is a party. (The only exception is the periodic report to the Committee on the Rights of the Child, which the Government submitted on 21 September 1994.) No reports have been submitted to the Human Rights Committee, which supervises implementation of the rights provided in the International Covenant on Civil and Political Rights, many of which are the subject of this report. The Ministry for Foreign Affairs has explained that as long as the FRY's status within the United Nations remains unresolved, the Government has no intention of meeting its reporting obligations.

97. This position does not accord with the Government's claim that it is a successor State which it made, for example, in a letter from the Charge d'affaires of the Permanent Mission to the United Nations to the

Secretary-General on 27 April 1992: "Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfill all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its ... participation in international treaties ratified or acceded to by Yugoslavia." Nor does it accord with the proclamation in article 16 of the FRY Constitution that the FRY "shall fulfil in good faith the obligations contained in international treaties to which it is a contracting party".

98. The International Covenant on Civil and Political Rights clearly entitles all people within the territory of the FRY to the rights guaranteed in the Covenant, and States parties to the Covenant have undertaken an obligation to respect and ensure those rights. The obligation to submit periodic reports about the ways in which that obligation is met is an integral part of that commitment. The Special Rapporteur therefore regrets that the Government has not met its obligations, especially with regard to the International Covenant on Civil and Political Rights. She is encouraged, however, that the Government has informed the Office of the United Nations High Commissioner for Human Rights that it will soon submit a report to the Committee on the Elimination of Racial Discrimination.

99. Also significant is the statement by the Ministry for Foreign Affairs to the Office of the United Nations High Commissioner for Human Rights that the Government does not see any reason to implement the measures for human rights protection articulated by the Commission on Human Rights in its latest resolution on the situation of human rights in the territory of the former Yugoslavia (1997/57). One of these measures was the establishment of an OHCHR presence in Pristina. In fact, when the Special Rapporteur met the Minister for Foreign Affairs in June 1997 he specifically rejected the Commission's call upon the Government to allow such a presence. The Special Rapporteur attaches great importance to this matter.

XIV. CONCLUSIONS AND RECOMMENDATIONS

100. The Government should review and implement the recommendations made by the Special Rapporteur in her previous reports, most of which have thus far gone unimplemented, notably the recommendation that the Government should take measures to strengthen legal and other guarantees for the protection of human rights. In particular, the Government should proceed to ratify the Optional Protocol to the International Covenant on Civil and Political Rights, enabling individuals to present claims to the Human Rights Committee after they have exhausted domestic remedies.

101. Also as previously recommended, the Government should create an accessible, independent and impartial supervisory institution, such as an ombudsman. If such a body cannot immediately be created at the federal level, it could first be established by one of the republics, for example Montenegro, whose top officials have informed the Special Rapporteur of their support for the creation of such an institution.

102. The Government of Serbia should permit all major political parties proper access to State-run television, and should provide conditions for

balanced reporting on their activities. It could take measures similar to those in force in Montenegro, which oblige State-run print and electronic media to carry any statement by a parliamentary party (whether in the Government or in opposition) as long as it is limited in length or duration.

103. The Government should remove from the draft media law broadly phrased formulations identified in this report which can be used to inhibit legitimate criticism or scrutiny of the conduct of public officials, as well as other provisions which could limit enjoyment of the right to freedom of expression.

104. The Government should establish a programme of human rights education in schools, academic and legal institutions, as well as in police training institutions. It should encourage wider and deeper knowledge of the human rights treaties to which the FRY is a party, as well as their direct application in court proceedings. It should undertake to translate into Serbian and Albanian, and widely distribute, these human rights treaties as well as other relevant United Nations standards such as the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, and the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

105. The Government should take prompt steps to eliminate the discrepancies between the human rights standards provided in the International Covenant on Civil and Political Rights and those of the FRY and republican constitutions as well as the Criminal Code and the Code of Criminal Procedure. The current legal framework lacks clarity and victims of human rights violations suffer the consequences of its arbitrary character. Particular attention should be paid to areas identified in this report, namely, judicial supervision of police detention, prompt access of arrested persons to lawyers, protection of human rights in emergency situations, and the right to life.

106. Lawyers should be granted prompt access to their clients after arrest and should on all occasions be permitted to communicate with clients in full confidentiality. They should be permitted in all circumstances to defend clients charged with minor offences under the Law on Petty Offences.

107. The Government should create an effective mechanism to ensure that procedural requirements in criminal and administrative law are enforced and that breaches of the rules by responsible officers are met with appropriate sanctions.

108. The Government should ensure that those responsible for torturing or ill-treating persons in custody and those who ordered or participated in using force against peaceful demonstrators in early 1997 are brought to justice. The Government should also examine and respond to the specific cases submitted by the Special Rapporteur. Immediate steps must be taken to end continuing police abuse and ill-treatment in Kosovo. The Government should also order an impartial investigation into the deaths of the two men who died in the custody of police in Kosovo in the course of this year.

109. The Special Rapporteur is deeply disturbed by the violent attacks against the police and private individuals in Kosovo, and urges all parties to find peaceful means to solve the problems in that region. The Government should furthermore take immediate steps to investigate acts of violence or vandalism directed against the Muslim community in Sandzak.

110. The Government should take measures to ensure the full independence of the judiciary. It should ensure that court orders are invariably executed by the police.

111. Attention should be paid to recent, apparently illegal evictions of Croat residents in the Belgrade municipality of Zemun. The authorities should also make sure that houses and apartments currently occupied by refugees in Vojvodina and other places are returned to their legitimate owners. Discriminatory practices must be halted.

112. The Government should take all necessary measures to create conditions for the free and safe return of refugees, and the return of their property or just compensation, in accordance with the bilateral agreement concluded with the Republic of Croatia. As provided in that agreement, a conclusion should now be reached on provision of social insurance. The Government should find a durable solution enabling refugees effectively to exercise their right to property in the countries they have left.

Annex

PROGRAMME OF MEETINGS OF THE SPECIAL RAPPORTEUR

Mission of 16-19 January 1997

15 January 1997

Pristina

Dr. Ibrahim Rugova	President of the Democratic League for Kosovo (LDK)
Mr. Miroslav Mijatovic	Head of Public Security
Mr. Pajazit Nushi	Chairman of the Council for the Defence of Human Rights and Freedoms
Mr. Momcilo Trajkovic	President of the Serb Resistance Movement
Mr. Jusuf Kelmendi	Administrator, Kosovska Mitrovica prison

16 January 1997

Turkish village near Podujevo

Local residents

Belgrade

His Holiness Pavle	Patriarch of the Serbian Orthodox Church

17 January 1997

Ms. Margit Savovic	Federal Minister for Human Rights
Mr. Vladimir Krivokapic	Federal Minister of Justice
Mr. Milan Milutinovic	Federal Minister for Foreign Affairs
Mr. Zoran Sokolovic	Minister of Interior of the Republic of Serbia
Ms. Bratislava Morina	Commissioner for Refugees
Mr. Goran Svilanovic	Centre for Anti-War Action
Ms. Sonja Biserko	Helsinki Committee for Human Rights
Ms. Natasa Kandic	Humanitarian Law Fund
Mr. Branimir Plese	Humanitarian Law Fund
Ms. Jelena Radojkovic	Belgrade Centre for Human Rights

18 January 1997

Mr. Zoran Djindjic	Democratic Party
Mr. Vuk Draskovic	Serb Renewal Movement
Mr. Kostantin Obradovic	Civic Alliance

Visit to the Opovo Refugee Center

Mr. Adelmo Risi Valdettaro	Deputy Chief, UNHCR
Ms. Daliborka Uljarevic	Student representative
Mr. Bojan Bogdanovic	Student representative
Mr. Vladimir Dobrosavljevic	Student representative

Visit of 16 February 1997

16 February 1997

Belgrade

Ms. Vesna Pesic	Civic Alliance
Mr. Rastko Kostic	Student representative
Ms. Todorovic	Student representative

Mission of 2-7 May 1997

3 May 1997

Pristina

Dr. Ibrahim Rugova	President of the LDK
Mr. Pajazit Nushi	Chairman of the Council for the Defence of Human Rights and Freedoms
Mr. Michael Frey	ICRC
Ms. Flaka Surroi	UNICEF

4 May 1997

Novi Pazar/Pljevlja

Mr. Safet Bandzovic	Sandzak Board for Human Rights
Mr. Sefko Alomerovic	Helsinki Committee for Human Rights
Mr. Husein Pelidija	Helsinki Committee for Human Rights

5 May 1997

Pljevlja

Mr. Mersudin Halilovic	Danish Refugee Council
Mr. Momcilo Bojovic	Mayor of Pljevlja
Mr. Prelevic	Lawyer, member of Roma community
Mr. Seki Radoncic	Journalist

6 May 1997

Podgorica

H.E. Mr. Momir Bulatovic	President of Montenegro
H.E. Mr. Milo Djukanovic	Prime Minister of Montenegro
Mr. Nebojsa Vucinic	Professor, Law Faculty
Mr. Milan Popovic	Professor, Law Faculty
Mr. Slobodan Franovic	Helsinki Committee for Human Rights
Mr. Filip Vujanovic	Minister of Interior
Mr. Dusko Lalicevic	Minister of Justice

Visit of 4-5 June 1997

4 June 1997

Belgrade

Mr. Ilija Djukic	Democratic Party
Mr. Slobodan Vuksanovic	Democratic Party
Ms. Vesna Pesic	Civic Alliance
Ms. Sonja Biserko	Helsinki Committee for Human Rights
Mr. Vojin Dimitrijevic	Belgrade Centre for Human Rights
Ms. Natasa Kandic	Humanitarian Law Fund
Mr. Dusan Janjic	Forum for Ethnic Relations
Ms. Sonja Licht	Soros Foundation

5 June 1997

Mr. Milan Milutinovic	Minister for Foreign Affairs
Ms. Radmila Milentijevic	Minister of Information

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